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Supreme Court of the United Staets

OCTOBER TERM, 1952

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Local UNION NO. 10, UNITED ASSOCIATION OF JOURNEYMEN PLUMBERS and STEAMFITTERS OF THE UNITED STATES AND CANADA OF THE AMERICAN FEDERATION OF LABOR, et al.,

Petitioners

v.

O. J. GRAHAM, O. T. GRAHAM, and E. M. GRAHAM, Partners, Trading As Graham Brothers,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS OF VIRGINIA

BEECHER E. STALLARD
Central National Bank Bldg.
Richmond, Va.
JOHN R. FOLEY
736 Bowen Building
Washington, D. C.
Counsel for Petitioners

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Appeals of Virginia entered in this case on January 23, 1952. The Honorable Chief Justice granted Petitioners an extension of time to and including May 17, 1952 within which to file this Petition. A further extension of time was granted to and including May 27, 1952.

OPINIONS BELOW

Neither the Supreme Court of Appeals of Virginia nor the Law and Equity Court of the City of Richmond rendered a written opinion.

JURISDICTION

The judgment of the Law and Equity Court of the City of Richmond was entered on July 17, 1951 (R. 26). The Supreme Court of Appeals of Virginia denied appeal on January 23, 1952 (R. 35).

The jurisdiction of this court is invoked under 28 U.S.C. Section 1257(3).

In compliance with Rule 12(1), third paragraph, the following is the procedural history of the matter in the State Courts of Virginia:

On September 25, 1950 the Richmond Building and Construction Trades Council placed a single picket on the sidewalk opposite the site where the Respondents were engaged in building construction activity. On the same date, the Respondents filed a Bill of Complaint in the Law and Equity Court of the City of Richmond, Virginia, seeking temporary and permanent injunctions and damages (R. 2). A temporary injunction was awarded on September 25, 1950 (R. 6).

A Motion to Dissolve Temporary Injunction was filed by Petitioners in the Law and Equity Court for the City of Richmond on October 2, 1950 (R. 14). Petitioners claimed that the injunction deprived them of the right of free speech and assemblage protected by the First and Fourteenth Amendments of the United States Constitution (R. 14). The Motion was overruled and Petitioners excepted to the denial on October 2, 1950.

The Answer was filed by Petitioners on October 19, 1950 (R. 17). In paragraphs 7 and 8 of the said Answer, the Petitioners stated that the peaceful picketing was engaged in for information purposes only (R. 20, 21).

Following a hearing, the Law and Equity Court of the City of Richmond on July 17, 1951 awarded a permanent injunction and damages in the amount of one hundred and ninety dollars ($190.00). (R. 26).

Petitioners petitioned the Supreme Court of Appeals of Virginia to appeal the judgment. The following errors were assigned:

1. Awarding a temporary injunction on September 25, 1950, and in overruling the defendants' written Motion to

Dissolve the Temporary Injunction filed by order dated October 2, 1950 which deprived the defendants of their right of free speech and assemblage guaranteed by the First Amendment to the Constitution of the United States and Section 12, Article I of the Constitution of Virginia, and protected against infringement by a state by the Fourteenth Amendment to the Constitution of the United States.

2. In decreeing on July 17, 1951 that the picketing carried on by the defendants was unlawful and the complainants were entitled to a permanent injunction and damages.

3. In arbitrarily decreeing that the picketing as carried on by the defendants was unlawful, which had the effect of holding that the picketing was not peaceful and therefore not protected by the First Amendment to the Constitution of the United States and Section 12, Article I of the Constitution of Virginia, and protected against infringement by a state by the Fourteenth Amendment to the Constitution of the United States.

4. In arbitrarily decreeing that the picketing as carried on by the defendants had damaged the complainants.

5. In denying the prayer in the defendants' Answer praying that the complainants' Bill of Complaint be dismissed with reasonable cost and attorney's fees to defendants' counsel.

6. In decreeing, ordering and finding in behalf of the complainants against the defendants in the manner and to any extent whatsoever and especially entering the decree of July 17, 1951 which called for monetary damages.

7. That the amount of the damages found by the court was excessive.

8. In decreeing there was sufficient evidence on which to base a permanent injunction and damages.

On January 23, 1952 the Supreme Court of Appeals of Virginia rejected the petition, refused the appeal and affirmed the decrees of the Law and Equity Court of the City of Richmond.

Petitioners filed with this Court an Application for Extension of Time Within Which to File Record and Petition for Writ of Certiorari. On April 15, 1952 the Honorable Chief Justice granted an extension of time to and including May 17, 1952. The time was further extended to May 27, 1952.

QUESTION PRESENTED

Whether peaceful picketing for the sole purpose of communicating information that all persons employed on a construction project were not members of a union is protected by the First and Fourteenth Amendments of the Constitution of the United States against infringement by a State instrumentality.

STATUTES INVOLVED

The pertinent statute and constitutional provisions are printed in the Appendix, infra, p. 10.

STATEMENT

During July, 1950 the Respondents were engaged in constructing a schoolhouse in the City of Richmond. Certain sub-contractors working on the job-site employed only union members including members of Petitioners' unions. Other sub-contractors employed persons who were not members of any union. (R. 212, 316).

On September 25, 1950, Petitioner G. P. Johnson, Sr., Business Agent of Petitioner Local No. 1018, picketed the schoolhouse which was still under construction. The picket sign read: "This is not a union job. Richmond Trades Council." (R. 203, 240). Only one person at a time engaged in the peaceful picketing.

The purpose of the picketing was to inform members of the Richmond Building and Construction Trades Council, all members of the local unions affiliated with the said Council and all friends of the Richmond Building and Construction Trades Council that the schoolhouse project was not a union job.

Approximately three or four union men, none members of Petitioner Unions, refused to continue their work while the picketing took place. All other employees continued to work.

On September 25, 1950 the Respondents sought and received an order from the Law and Equity Court of the City of Richmond temporarily enjoining the picketing as aforesaid.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Appeals of Virginia erred:

1. In refusing to accept Petitioners' petition of appeal and hold that the peaceful picketing engaged in by certain of the Petitioners was protected by the First and Fourteenth Amendments of the Constitution of the United States against infringement by the Law and Equity Court of the City of Richmond.

2. In affirming the decrees of the Law and Equity Court of the City of Richmond.

REASONS FOR GRANTING THE WRIT

The important question of constitutional protection of peaceful picketing solely for communication purposes is presented by this case. The basic issue is whether or not peaceful picketing per se is entitled to such protection. The National Labor Relations Act, as amended, is not involved.

In *Hughes v. Superior Court of California*, 339 U.S. 460, 465, 94 L. Ed. 985, 992, this Court stated:

" * * And we have found that because of its element

of communication picketing under some circumstances finds sanction in the Fourteenth Amendment. Thornhill v. Alabama, 310 U.S. 88, 84, L. Ed. 1093, 60 S. Ct. 736; American Federation of Labor v. Swing, 312 U.S. 321, 85 L. Ed. 855, 61 S. Ct. 568; Bakery and Pastry Drivers and Helpers Local v. Wohl, 315 U.S. 769, 86 L. Ed. 1178, 62 S. Ct. 816; Cafeteria Employees Union v. Angelos, 320 U.S. 293, 88 L. Ed. 58, 64 S. Ct. 126. However general or loose the language of opinions, the specific situations have controlled decisions. * * "

The decisions cited as applied to the facts of the instant case were brought to the attention of both Virginia Courts but rejected by them. The Courts thus committed palpable error which this Court is respectfully requested to correct.

The sole object of the picketing was to communicate to members of Petitioners' Council and Unions and their friends that non-union men were working on the schoolhouse project (R. 211, 218, 221, 223, 226, 231, 248, 249, 253-257, 262, 263, 289, 293, 305, 313, 315, 323, 339, 340, 459). There was no attempt to violate the state anti-trust law. *Giboney v. Empire Storage and Ice Company*, 336 U.S. 490, 93 L. Ed. 834, 69 S. Ct. 684. There was no effort to compel an employer to coerce his employees to join a union contrary to state law. *Building Service Employees International Union v. Gazzam*, 339 U.S. 532, 94 L. Ed. 1045. There was no dictation by Petitioners to business men and property owners as to business policy concerning construction at the schoolhouse. *International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 309, et al., v. Hanke, et al.*, 339 U.S. 470, 94 L. Ed. 995. Petitioners took no action to compel Respondents to hire union members to the exclusion of non-union men in violation of Virginia Code 1950, Secs. 40-68 through 40-74, the Virginia "Right to Work" law. *Hughes v. Superior Court of California, supra.*

The record unequivocally discloses that the sole and exclusive object of the picketing was that of communica-

tion. Petitioners by picketing did not seek to deprive non-union employees then engaged in work on the schoolhouse of the right to continue such work unless they became members of a union. (R. 240, 249, 282, 289, 332). Thus, there was no basis in fact for the Law and Equity Court of the City of Richmond to hold that "the picketing complained of was conducted and carried on by the defendants . . . for aims, purposes and objectives in conflict with the provisions of the Right to Work laws of the State of Virginia and, therefore, illegal . . . " (R. 26).

That a state court has power to declare what the public policy of such state is concerning labor relations and determine that peaceful picketing violates such policy and is thus enjoinable is not disputed. However, in the instant case both the Law and Equity Court of the City of Richmond and the Supreme Court of Appeals of Virginia erred in applying the public policy of that state. That policy was declared by the Supreme Court of Appeals in *Edwards v. Commonwealth of Virginia*, 191 Va. 272 (1951). There the Court stated, after reviewing the pertinent decisions of this Court, that:

> "The instrument of state action, whether judicial process or legislative enactment must be specifically directed to acts or conduct which overstep legal limits and *not include those which keep within the protected area of free speech.*"
>
> (Emphasis supplied)

Thus the public policy of the State of Virginia recognizes that picketing is not illegal when in the protected area of free speech and that the Virginia Courts may not use their judicial process to limit picketing within that protected area. If the picketing in the instant case is not within such area then, in truth, no such protected area exists in Virginia or anywhere else. For the record abundantly demonstrates that the picketing here was used solely for speech purposes to inform union men and their friends that non-union workers were employed on the job site. No other

purpose rationally can be attributed to the picketing. To impute a different or further purpose to the picketing is to fly in the face of the record and distort facts. And that is the error committed by the Virginia Courts.

For, in effect, the Courts stated that Petitioners by picketing sought to compel the non-union men to quit work or join a union. But the record discloses that the non-union men did not quit work and did not join the union. Further, nowhere in the record does it appear that any contact by Petitioners was made with any non-union man for any purpose at any time. Furthermore, the record does not show that Petitioners compelled or sought to compel either the General Contractor or any sub-contractor to coerce any employee to join a union or refrain from joining a union. The request of O. J. Graham by Petitioner Joinville that a union plumbing sub-contractor be given the job on the schoolhouse does not constitute compulsion or coercion. (R. 210, 214, 215, 234-236, 260, 261, 274-277, 288, 417-420, 465-467) Cf. *Building Service Employees Internation Union v. Gazzam, supra.*

Thus, on the facts there could not have been a violation of the Virginia Right to Work Law by Petitioners. The Virginia Courts in so holding acted in obvious disregard of the facts with an arbitrariness this Court should not condone. *Ward & Gow v. Krinsky,* 259 U.S. 503, 42 S.Ct. 529, 66 L.Ed. 1033; *Corn Products Ref. Co. v. Eddy,* 249 U.S. 427, 39 S.Ct. 325, 63 L.Ed. 689. The enjoining of the peaceful picketing in this case deprived Petitioners of rights protected by the First and Fourteenth Amendments of the Federal Constitution. This protection the Petitioners have claimed from the outset.

The issue involved is one of paramount importance to every union worker in the land. If the peaceful picketing employed by the Petitioners for the sole purpose of communication is not protected by the Federal Constitution, then peaceful picketing is per se illegal.

This is the effect of the Virginia Courts' decisions. But this Court has not so held. On the contrary, this Court has steadfastly recognized that the element of communication in peaceful picketing is protected by the Federal Constitution. Thus a Federal question exists.

CONCLUSION

For the foreging reasons, it is respectfully requested that this petition for a Writ of Certiorari be granted.

Respectfully submitted,

BEECHER E. STALLARD
Central National Bank Bldg.
Richmond, Va.

JOHN R. FOLEY
736 Bowen Building
Washington, D. C.

Counsel for Petitioners

APPENDIX
UNITED STATES CONSTITUTION

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

VIRGINIA CONSTITUTION

Art. I, Sec. 12. — 2 Michies Dig. 771, §153.

Freedom of the Press and of Speech

That the freedom of the press is one of the great bulwarks of liberty, and can never be restrained but by despotic governments, and any citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right.

STATE STATUTE

Virginia Code 1950, Secs. 40-68 through 40-74

Sec. 40-68. It is hereby declared to be the public policy of Virginia that the right of persons to work shall not be denied or abridged on account of membership or nonmembership in any labor union or labor organization.

Sec. 40-69. Any agreement or combination between any employer and any labor union or labor organization whereby persons not members of such union or organization shall be denied the right to work for said employer, or whereby such membership is made a condition of employment or continuation of employment by such employer, or whereby any such union or organization acquires an employment monopoly in any enterprise, is hereby declared to be against public policy and an illegal combination or conspiracy.

Sec. 40-70. No person shall be required by an employer to become or remain a member of any labor union or labor organization as a condition of employment or continuation of employment by such employer.

Sec. 40-71. No person shall be required by an employer to abstain or refrain ftom membership in any labor union or labor organization as a condition of employment or continuation of employment.

Sec. 40-72. No employer shall require any person, as a condition of employment or continuation of employment, to pay any dues, fees or other charges of any kind to any labor union or labor organization.

Sec. 40-74. Any person who may be denied employment or be deprived of continuation of his employment in violation of sections three, four or five or of one or more of such sections, shall be entitled to recover from such employer and from any other person, firm, corporation or association acting in concert with him by appropriate action in the courts of this Commonwealth, such damages as he may have sustained by reason of such denial or deprivation of employment.